



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,376	11/26/2003	Alan D. Olin	70494.6 (M-16842-4P US)	8032
33605	7590	06/11/2010	EXAMINER	
Haynes and Boone, LLP			PASCUA, JES F	
IP Section			ART UNIT	
2323 Victory Avenue			PAPER NUMBER	
SUITE 700			3782	
Dallas, TX 75219			MAIL DATE	
			DELIVERY MODE	
			06/11/2010	
			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/723,376

**Applicant(s)**

OLIN ET AL.

**Examiner**

Jes F. Pascua

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 5-13, 15, 17-24, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-9, 11, 12, 15, 17-21, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 13, 22, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/22/2010 has been entered.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 10, 13, 22, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Document No. 11-59701 to Nakagome et al. and U.S. Patent No.6,007,246 to Kinigakis et al.

Nakagome et al. discloses a bag comprising a top end having a seal, a bottom end, first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge is straight and has a non-gusseted portion located proximate to the top end, forming an acute included angle with the top end at seal (7) and being substantially perpendicular to and longer than the bottom end. A

pour spout is located along the non-gusseted portion and oriented substantially parallel to the first side edge to provide access to an opening. However, Nakagome et al. does not show the bottom end having a generally ovoid shape. Kinigakis et al. discloses that it is known in the art of dispensing bags to provide a bottom end that is generally ovoid in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of Nakagome et al. with the ovoid-shaped, bottom end of Kinigakis et al., in order to permit the bag to rest in an upright position.

Furthermore, Nakagome et al. discloses the claimed device, as discussed above. Nakagome et al. especially discloses the pour spout and opening being initially accessed by a tear strip that is parallel to the first side edge. However, Nakagome et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed. Providing the pour spout of Nakagome et al. with the reclosable, zipper fastener of Kinigakis et al., as discussed above, meets the recitation "a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an included angle of less

than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position".

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 10, 13, 22, 32 and 33 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782